



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO OVERNITE TRANSPORTATION COMPANY EPA ID No. VAD150097673

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Overnite Transportation Company., for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "Overnite Transportation" means Overnite Transportation Company, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Foremost Sales facility, owned by Overnite Transportation Company, located at 7200 Midlothian Turnpike, in Richmond, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VHWMR" means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Overnite Transportation owns and operates Foremost Sales, a salvaged goods outlet store in Richmond, Virginia. The facility is a small quantity generator of hazardous waste.
2. On November 19, 2004, DEQ conducted an inspection of the Foremost Sales facility. The following violations were noted during the inspection:
 - Receipt of hazardous waste without a submitting an application or obtaining the required permit.
 - Failure to obtain a detailed chemical and physical analysis of stored waste, before the waste was accumulated at the Facility.
 - Failure to develop and follow a written waste analysis plan.
 - Failure to conduct, document and review employee training in hazardous waste management and maintain required personnel records.
 - Failure to make arrangements to familiarize the local authorities with the facility.
 - Failure to familiarize local hospitals of the hazardous waste handled at the Facility.
 - Failure to have a Contingency Plan that meets all regulatory requirements.
 - Failure to label or clearly mark each applicable container as "Hazardous Waste".
 - Failure to conduct weekly inspections of containers and storage areas.
 - Failure to determine whether a generated solid waste is hazardous.
 - Failure to maintain and inspect emergency equipment.
 - Failure to prepare and submit a copy of the biennial report for the year 2003.
 - Failure to prepare a manifest of transported hazardous waste in accordance with applicable regulations.
 - Failure to utilize a permitted hazardous waste transporter or obtain a transporter permit for hazardous waste shipments that terminated in the Commonwealth.

3. On February 24, 2005, Notice of Violation (NOV) No. 2005-02-PRO-602 was issued for the above violations.
4. On March 30, 2005, a meeting was held to discuss the citations of the above Notice of Violation.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders Overnite Transportation, and Overnite Transportation voluntarily agrees to pay a civil charge of \$3,600 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, Overnite Transportation shall include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Overnite Transportation for good cause shown by Overnite Transportation, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Overnite Transportation by DEQ on February 24, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Overnite Transportation admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Overnite Transportation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Overnite Transportation declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Overnite Transportation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Overnite Transportation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Overnite Transportation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Overnite Transportation shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.


10. This Order shall become effective upon execution by both the Director or his designee and Overnite Transportation. Notwithstanding the foregoing, Overnite Transportation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Overnite Transportation. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Overnite Transportation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Overnite Transportation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of September, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Overnite Transportation voluntarily agrees to the issuance of this Order.

Date: _____

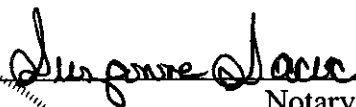
By: 
Philip R. Warren
Vice President

Commonwealth of Virginia

City/County of Richmond

The foregoing document was signed and acknowledged before me this 12th day of August, 2005, by Philip R. Warren, who is
(Name)

Vice President of Overnite Transportation, on behalf of the Corporation.
(Title)



Notary Public

My commission expires

7-31-09

